antibody, C2B8, and that this antibody binds B cell lymphomas. Applicants respectfully traverse this rejection.

First, Applicants refer to the Reply filed on April 24, 2001 in order to reiterate that the present claims are entitled to priority to the parent application 08/149,099 at the very least, that being November 3, 1993. As discussed in the previous Reply, the Examiner believes that there is no support for claims 11-13 in the priority application because, first, the priority application only discloses the combined use of the specific anti-CD20 antibody C2B8 in combination with "a" chemotherapeutic agent, not the general class of chimeric anti-CD20 antibodies as claimed. The Examiner further asserts that there is not disclosure of "at least one" chemotherapeutic agent because only one ("a") agent is disclosed in the priority application as being used with C2B8. Although the priority application incorporates by reference a publication in this regard on pages 61-62 of the parent application, the Examiner believes that this reference refers to the use of individual chemotherapeutic agents, not mixtures.

Again, Applicants respectfully submit that a prior disclosure of a species enables a genus but not vice versa. Indeed, a prior disclosure of a broad genus should not be seen as enabling a specific embodiment, in order to allow future practitioners to develop particular species having potential new characteristics. However, it would make no sense to assert that a prior disclosure of a specific species does not provide priority for the broader genus, particularly when the priority application discloses that particular product in a generic way (see page 9, Summary of Invention). Indeed, according to MPEP 201.11 (When not entitled to priority . . .), the test appears to be whether a particular "feature" was disclosed generically, not whether a particular claim finds *ipsis verbis* support. Here, Applicant's priority application discloses the particular feature of a genus of chimeric anti-CD20 antibodies in treatment methods for B cell lymphoma, and also discloses combination methods using an exemplary antibody in combination with chemotherapeutic agents. Thus, priority exists in the parent application for the use of a generic anti-CD20 antibody in the claimed methods.

Regarding the feature "at least one chemotherapeutic agent," Applicants again submit that one of skill in the art in reading the list of agents on page 62 of the priority application – cyclophosphamide, doxorubicin, vincristine and prednisone – would have immediately

known that combinations of chemotherapeutic agents could be employed, given that the specific agents listed were known in the art at the time as the combination regimen "CHOP." In fact, chemotherapeutic agents were commonly employed as part of multi-agent regimens and were rarely used individually. Applicants attached to the previous Reply nine abstracts of references available as of the priority date of the invention that prove not only that the four agents listed by name in the priority application were part of a known chemotherapeutic combination regimen, but also that other combination regimens were commonly employed by those of skill in the art. Given this evidence reflecting what would have been common knowledge at the time, Applicants respectfully request that priority, at the very least to parent application 08/149,099, be confirmed for the instant claims.

Given that the instant claims are entitled at the very least to benefit of priority of parent application 08/149,099 (which was filed on November 3, 1993), then the Reff (Blood) reference is not prior art as to the instant claims because it was published in January 1994. Furthermore, the Reff Journal of Biological Chemistry abstract is also not prior art, because this reference reports the work of the present inventors and was published within the year prior to the effective filing date of the present claims. In any case, this reference does not disclose the use of the C2B8 antibody in a combined therapeutic approach as recited in the instant claims.

Regarding the Anderson et al. abstract published in December 1991, the Examiner indicates in the Office Action that the Katz type Anderson declaration on file in the present application is not sufficient to overcome the present rejection because in any case, the claims allegedly are not entitled to priority of parent application 07/978,891 (filed November 13, 1992). Applicants are not sure on what basis the Examiner rests this assertion, but it appears that the Examiner is trying to argue that a Katz-type declaration is only effective against a prior art reference filed in the year prior to the effective filing date of the application, and because the instant claims are allegedly not entitled to priority of the 07/978,891 application, applicants cannot use a Katz-type declaration to antedate the reference.

First, Applicants respectfully note that a Katz type declaration is a declaration pursuant to 37 CFR §1.132, which may be filed under a wide variety of circumstances and has no limitations with regard to filing date versus date of the cited reference. Rather, it is a

declaration pursuant to 37 CFR § 1.131 that is commonly used to antedate a cited reference. Furthermore, only when the reference cited is statutory bar is the Applicant limited in the use of a §1.131 declaration. When the reference cited is not a statutory bar, for instance, when the reference is one of a combination cited in a rejection under 35 U.S.C. §103, a declaration under §1.131 may be used to antedate the reference. It follows, then, that priority and the effective filing date of the application is only relevant to the filing of a §1.131 declaration in response to a statutory bar.

Nevertheless, this is of no consequence to the present application because Applicant has not filed a §1.131 declaration in the present application. Therefore, it is not clear why the Examiner believes that a determination of priority of the instant claims is relevant to overcoming the Anderson abstract. The Anderson abstract has not been cited as a statutory bar against the present application, and Applicants have not attempted to antedate this reference by filing a §1.131 declaration. Rather, Applicants did file in the present application a declaration by Dr. Anderson establishing that the Anderson abstract does not contain sufficient information to enable one skilled in the art to synthesize or otherwise obtain the C2B8 or 2B8 antibodies, and that the antibodies were not made publicly available prior to the priority date of the present application. See paragraph (4) of the Anderson declaration signed February 1, 1996.

Notwithstanding the insufficient disclosure of C2B8 in the Anderson abstract and the fact that C2B8 was not made publicly available, the reference does not render obvious the methods of the instant claims because there is absolutely no mention of the use of the C2B8 antibody or any other anti-CD20 antibody in a combined therapeutic regimen with any chemotherapeutic agent. Moreover, there is no disclosure in the Anderson abstract of the specific dosage ranges recited in the instant claims. Hellstrom et al. does not cure these deficiencies, because Hellstrom et al. concerns the use of a chimeric antibody specific for a breast cancer cell line in treatments geared toward breast cancer. Robinson et al. also fails to make up for these deficiencies because, although Robinson reports the use of a chimeric anti-CD20 antibody for the treatment of lymphoma, it does not disclose the claimed dosage range or the use of the chimeric antibody in the claimed combined therapeutic methods.

Thus, the rejection under 35 U.S.C. §103(a) based on the combination of Hellstrom, Robinson and Anderson or either of the Reff references cannot stand because the Reff references are not prior art to the instant claims, and neither Hellstrom, Robinson nor Anderson render obvious the claimed methods. Neither Hellstrom, Robinson nor Anderson disclose a combined therapeutic regimen utilizing both an anti-CD20 antibody and a chemotherapeutic agent. Moreover, none of these references teach the dosage range recited in the claims. In view of these remarks, Applicants respectfully request that the rejection under 35 U.S.C. §103(a) as set forth in paragraph (10) of the Office Action be withdrawn.

Thus, a Notice of Allowance appears to be next in order. If the Examiner believes that a telephone conference would help expedite allowance of the instant application, he is respectfully requested to contact the undersigned.

Respectfully submitted,
PILLSBURY WINTHROP LLP

By: _____
Bonnie D. Weiss
Registration No. 43,255

1600 Tysons Boulevard
McLean, VA 22102
(703) 905-2000
(703) 905-2500 Facsimile

Date: August 8, 2001